

## **Code of Virginia - Stormwater Law (Effective as of July 1, 2006)**

### **§ 10.1-603.2. Definitions.**

As used in this article, unless the context requires a different meaning:

"Board" means the Virginia Soil and Water Conservation Board.

"CWA" means the federal Clean Water Act (33 USC § 1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Public Law [92-500](#), as amended by Public Law [95-217](#), Public Law [95-576](#), Public Law [96-483](#), and Public Law [97-117](#), or any subsequent revisions thereto.

"Department" means the Department of Conservation and Recreation.

"Director" means the Director of the Department of Conservation and Recreation.

"Flooding" means a volume of water that is too great to be confined within the banks or walls of the stream, water body, or conveyance system and that overflows onto adjacent lands, thereby causing or threatening damage.

"Land disturbance" or "land disturbing activity" means a manmade change to the land surface that potentially changes its runoff characteristics including any clearing, grading, or excavation associated with a construction activity regulated pursuant to the federal Clean Water Act.

"Linear development project" means a land development project that is linear in nature such as, but not limited to, (i) the construction of electric and telephone utility lines, and natural gas pipelines; (ii) construction of tracks, rights-of-way, bridges, communication facilities and other related structures of a railroad company; and (iii) highway construction projects.

"Local stormwater management program" or "local program" means the various methods employed by a locality to manage the quality and quantity of runoff resulting from land disturbing activities and shall include such items as local ordinances, permit requirements, policies and guidelines, technical materials, inspection, enforcement, and evaluation consistent with this article.

"Municipal separate storm sewer" means a conveyance or system of conveyances otherwise known as a municipal separate storm sewer system or "MS4," including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains:

1. Owned or operated by a federal, state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction or delegated authority for

erosion and sediment control and stormwater management, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters;

2. Designed or used for collecting or conveying storm water;
3. That is not a combined sewer; and
4. That is not part of a publicly owned treatment works.

"Municipal Separate Storm Sewer System Management Program" means a management program covering the duration of a permit for a municipal separate storm sewer system that includes a comprehensive planning process that involves public participation and intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable, using management practices, control techniques, and system, design and engineering methods, and such other provisions that are appropriate.

"Nonpoint source pollution" means pollution whose sources cannot be pinpointed but rather is washed from the land surface in a diffuse manner by stormwater runoff.

"Peak flow rate" means the maximum instantaneous flow from a given storm condition at a particular location.

"Permit" means an approval issued by the permit issuing authority for the initiation of a land-disturbing activity, or for stormwater discharges from an MS4.

"Permit issuing authority" means the Board, the Department, or a locality that is delegated authority by the Board to issue, deny, revoke, terminate, or amend stormwater permits under the provisions of this article.

"Permittee" means the person or locality to which the permit is issued.

"Person" means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body, any interstate body, or any other legal entity.

"Runoff volume" means the volume of water that runs off the land development project from a prescribed storm event.

"Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include storm water runoff, snow melt runoff, and surface runoff and drainage.

"Stormwater Management Program" means a program established by a locality that is consistent with the requirements of this article and associated regulations and guidance documents.

"Subdivision" means the same as defined in § [15.2-2201](#).

"Virginia Stormwater Management Program (VSMP)" means the Virginia program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing requirements pursuant to the federal Clean Water Act and this article.

"Water quality volume" means the volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project.

"Watershed" means a defined land area drained by a river or stream or system of connecting rivers or streams such that all surface water within the area flows through a single outlet.

(1989, cc. 467, 499; 1991, c. 84; 1994, cc. 605, 898; 2004, c. 372; 2006, c.21; 2006, c.171.)

#### **§ 10.1-603.2:1. Powers and duties of the Virginia Soil and Water Conservation Board.**

In addition to other powers and duties conferred upon the Board, it shall permit, regulate, and control stormwater runoff in the Commonwealth. In accordance with the VSMP, the Board may issue, deny, revoke, terminate, or amend stormwater permits; adopt regulations; approve and periodically review local stormwater management programs and management programs developed in conjunction with a municipal separate storm sewer permit; enforce the provisions of this article; and otherwise act to ensure the general health, safety and welfare of the citizens of the Commonwealth as well as protect the quality and quantity of state waters from the potential harm of unmanaged stormwater. The Board may:

1. Issue, deny, amend, revoke, terminate, and enforce permits for the control of stormwater discharges from Municipal Separate Storm Sewer Systems and land disturbing activities.

2. Delegate to the Department or to an approved locality any of the powers and duties vested in it by this article except the adoption and promulgation of regulations. Delegation shall not remove from the Board authority to enforce the provisions of this article.

3. Take administrative and legal actions to ensure compliance by permittees, any person subject to permit requirements under this article, and those localities with an approved local stormwater management program and management programs developed in conjunction with a municipal separate storm sewer system permit with the provisions of this article including the proper enforcement and implementation of, and continual compliance with, this article.

4. After notice and opportunity for a hearing by the Board, amend or revoke any permit issued by the permit issuing authority under this article on the following grounds or for good cause as may be provided by the regulations of the Board:

- a. The permittee or any person subject to permit requirements under this article has violated any order or regulation of the Board, any condition of a permit, any provision of this article, any order of a court, or any order of the permit issuing authority, where such violation results in the unreasonable degradation of properties, water quality, stream channels, and other natural resources, or the violation is representative of a pattern of serious or repeated violations including the disregard for or inability to comply with applicable laws, regulations, permit conditions, orders, rules, or requirements;

- b. The permittee or any person subject to permit requirements under this article has failed to disclose fully all relevant material facts or has misrepresented a material fact

in applying for a permit, or in any other report or document required under this law or under the regulations of the Board;

c. The activity for which the permit was issued causes unreasonable degradation of properties, water quality, stream channels, and other natural resources; or

d. There exists a material change in the basis on which the permit was issued that requires either a temporary or a permanent reduction or elimination of any discharge or land disturbing activity controlled by the permit necessary to prevent unreasonable degradation of properties, water quality, stream channels, and other natural resources.

5. Cause investigations and inspections, or delegate authority to do so, to ensure compliance with any permits, conditions, policies, rules, regulations, rulings and orders which it may adopt, issue or establish and to furnish advice, recommendations, or instructions for the purpose of obtaining such compliance.

6. Adopt rules governing the procedure of the permit issuing authority with respect to: (i) hearings; (ii) the filing of reports; (iii) the issuance of permits and special orders; and (iv) all other matters relating to procedure; and to amend or cancel any rule adopted. Public notice of every rule adopted under this section shall be by such means as the permit issuing authority may prescribe but must be consistent with the Administrative Process Act (§ [2.2-4000](#) et seq.).

7. Issue special orders to a permittee or any person subject to permit requirements under this article (i) who is permitting or causing the unreasonable degradation of properties, water quality, stream channels, and other natural resources to cease and desist from such activities, (ii) who has failed to construct facilities in accordance with final approved plans and specifications to construct such facilities, (iii) who has violated the terms and provisions of a permit issued by the permit issuing authority; to comply with the provisions of the permit, this article and any decision of the permit issuing authority, the Department, or the Board, or (iv) who has violated the terms of an order issued by the court, the permit issuing authority, the Department, or the Board to comply with the terms of such order, and also to issue orders to require any permittee or any person subject to permit requirements under this article to comply with the provisions of this article and any decision of the Board.

Such special orders are to be issued only after a hearing with at least 30 days' notice to the affected permittee or any person subject to permit requirements under this article, of the time, place, and purpose thereof, and they shall become effective not less than 15 days after the date of mailing by certified mail of the notice to the last known address of the permittee or any person subject to permit requirements under this article; provided that if the Board finds that any such permittee or any person subject to permit requirements under this article is grossly affecting or presents an imminent and substantial danger to (i) the public health, safety or welfare, or the health of animals, fish or aquatic life; (ii) a public water supply; or (iii) recreational, commercial, industrial, agricultural or other reasonable uses, it may issue, without advance notice or hearing, an emergency special order directing the permittee or any person subject to permit requirements under this article to cease such pollution or discharge immediately, and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof to the permittee or any person subject to permit requirements under this article, to affirm, modify, amend, or cancel such emergency special order. If the permittee or any person subject to permit requirements under this article who has been issued such a special order or an emergency special order is not complying with the terms thereof, the Board may proceed in accordance with § [10.1-603.14](#), and where the order is based on a finding of an imminent and substantial danger, the

court shall issue an injunction compelling compliance with the emergency special order pending a hearing by the Board. If an emergency special order requires cessation of a discharge, the Board shall provide an opportunity for a hearing within 48 hours of the issuance of the injunction.

The provisions of this section notwithstanding, the Board may proceed directly under § [10.1-603.14](#) for any past violation or violations of any provision of this article or any regulation duly adopted hereunder.

With the consent of any permittee or any person subject to permit requirements under this article who has violated or failed, neglected, or refused to obey any regulation or order of the Board, any condition of a permit or any provision of this article, the Board may provide, in an order issued by the Board against such person, for the payment of civil charges for violations in specific sums not to exceed the limit specified in subsection A of § [10.1-603.14](#). Such civil charges shall be collected in lieu of any appropriate civil penalty that could be imposed pursuant to subsection A of § [10.1-603.14](#) and shall not be subject to the provisions of § [2.2-514](#). Such civil charges shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Stormwater Management Fund established pursuant to § [10.1-603.4:1](#).

(2004, c. 372; 2006, c. 171)

#### **§ 10.1-603.2:2. Permits.**

A. It shall be unlawful to cause a stormwater discharge from an MS4 or a land disturbing activity except in compliance with a permit issued by a permit issuing authority.

B. All permits issued by the permit issuing authority under this article shall have fixed terms. The term of a permit shall be based upon the projected duration of the project, the length of any required monitoring, or other project operations or permit conditions; however, the term shall not exceed five years. The term of a permit issued by the permit issuing authority shall not be extended by modification beyond the maximum duration and the permit shall expire at the end of the term unless an application for a new permit has been filed in a timely manner as required by the regulations of the Board, and the permit issuing authority is unable, through no fault of the permittee, to issue a new permit before the expiration date of the previous permit.

(2004, c. 372; 2006, c.171)

#### **§ 10.1-603.3. Establishment of stormwater management programs by localities.**

A. Any locality located within Tidewater Virginia as defined by the Chesapeake Bay Preservation Act (§ [10.1-2100](#) et seq.), or any locality that is partially or wholly designated as an MS4 under the provisions of the federal Clean Water Act, shall be required to adopt a local stormwater management program for land disturbing activities consistent with the provisions of this article according to a schedule set by the Board but no sooner than 12 months and not more than 18 months following the effective date of the regulation that establishes local program criteria and delegation procedures.

B. Any locality not specified in subsection A may elect to adopt and administer a local stormwater management program for land disturbing activities pursuant to this article. Such localities shall inform the Board and the Department of their initial intention to seek delegation for the stormwater management program for land disturbing permits within six months following the effective date of the regulation that establishes local program criteria and delegation procedures. Thereafter, the Department shall provide an annual schedule by which localities can submit applications for delegation.

C. In the absence of the delegation of a stormwater management program to a locality, the Department will administer the responsibilities of this article within the given jurisdiction.

D. The Department shall develop a model ordinance for establishing a local stormwater management program consistent with this article.

E. Each locality that is required to or that elects to adopt and administer an approved local stormwater management program shall, by ordinance, establish a local stormwater management program that may be administered in conjunction with a local MS4 program and a local erosion and sediment control program, which shall include, but is not limited to, the following:

1. Consistency with regulations adopted in accordance with provisions of this article;
2. Provisions for long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff; and
3. Provisions for the integration of locally adopted stormwater management programs with local erosion and sediment control, flood insurance, flood plain management, and other programs requiring compliance prior to authorizing construction in order to make the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs.

F. The Board shall delegate a local stormwater management program to a locality when it deems a program consistent with this article.

G. Delegated localities may enter into agreements with soil and water conservation districts, adjacent localities, or other entities to carry out the responsibilities of this article.

H. Localities that adopt a local stormwater management program shall have the authority to issue a consolidated stormwater management and erosion and sediment control permit that is consistent with the provisions of the Erosion and Sediment Control Law (§ [10.1-560](#) et seq.).

I. Any local stormwater management program adopted pursuant to and consistent with this article shall be considered to meet the stormwater management requirements under the Chesapeake Bay Preservation Act (§ [10.1-2100](#) et seq.) and attendant regulations.

(1989, cc. 467, 499; 2004, c. 372; 2006, c. 171)

#### **§ 10.1-603.4. Development of regulations.**

The Board is authorized to adopt regulations that specify minimum technical criteria and administrative procedures for stormwater management programs in Virginia. The regulations shall:

1. Establish standards and procedures for delegating the authority for administering a stormwater management program to localities;
2. Establish minimum design criteria for measures to control nonpoint source pollution and localized flooding, and incorporate the stormwater management regulations adopted pursuant to the Virginia Erosion and Sediment Control Law (§ [10.1-560](#) et seq.), as they relate to the prevention of stream channel erosion. These criteria shall be periodically modified as required in order to reflect current engineering methods;
3. Require the provision of long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff;
4. Require as a minimum the inclusion in local programs of certain administrative procedures which include, but are not limited to, specifying the time period within which a local government that has adopted a stormwater management program must grant permit approval, the conditions under which approval shall be granted, the procedures for communicating disapproval, the conditions under which an approved permit may be changed and requirements for inspection of approved projects;
5. Establish, with the concurrence of the Director, a statewide permit fee schedule for stormwater management related to land disturbing activities of one acre or greater. The fee schedule shall also include a provision for a reduced fee for land disturbing activities between 2,500 square feet and up to 1 acre in Chesapeake Bay Preservation Act (§ [10.1-2100](#) et seq.) localities. The regulations shall be governed by the following:
  - a. The revenue generated from the statewide stormwater permit fee shall be collected and remitted to the State Treasurer for deposit in the Virginia Stormwater Management Fund established pursuant to § [10.1-603.4:1](#). However, whenever the Board has delegated a stormwater management program to a locality or is required to do so under this article, no more than 30 percent of the total revenue generated by the statewide stormwater permit fees collected within the locality shall be remitted to the State Treasurer, for deposit in the Virginia Stormwater Management Fund.
  - b. Fees collected pursuant to this section shall be in addition to any general fund appropriation made to the Department; however, the fees shall be set at a level sufficient for the Department to carry out its responsibilities under this article;
6. Establish statewide standards for stormwater management from land disturbing activities of one acre or greater, except as specified otherwise within this article, and allow for the consolidation in the permit of a comprehensive approach to addressing stormwater management and erosion and sediment control, consistent with the provisions of the Erosion and Sediment Control Law (§ [10.1-560](#) et seq.) and this article. However, such standards shall also apply to land disturbing activity exceeding an area of 2500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC [10-20](#) et seq.) adopted pursuant to the Chesapeake Bay Preservation Act (§ [10.1-2100](#) et seq.);

7. Require that stormwater management programs maintain after-development runoff rate of flow and characteristics that replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology, or improve upon the contributing share of the existing predevelopment runoff characteristics and site hydrology if stream channel erosion or localized flooding is an existing predevelopment condition. Any land-disturbing activity that provides for stormwater management shall satisfy the conditions of this subsection if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5, 2, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or manmade channels as defined in any regulations promulgated pursuant to this section, or any ordinances adopted pursuant to § [10.1-603.3](#) or [10.1-603.7](#);

8. Encourage low impact development designs, regional and watershed approaches, and nonstructural means for controlling stormwater; and

9. Establish, with the concurrence of the Director, a statewide permit fee schedule for stormwater management related to municipal separate storm sewer system permits.

(1989, cc. 467, 499; 1991, c. 84; 2004, c. 372; 2005, c. 102; 2006, c.21)

#### **§ 10.1-603.4:1. Virginia Stormwater Management Fund established.**

There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Stormwater Management Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys collected pursuant to § 10.1-603.4 shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of carrying out the Department's responsibilities under this article. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

An accounting of moneys received by and distributed from the Fund shall be kept by the State Comptroller.

(2004, c. 372.)

#### **§ 10.1-603.5. State agency projects.**

A. A state agency may not undertake any land clearing, soil movement, or construction activity involving soil movement or land disturbance unless the agency has submitted a permit application for the land-disturbing activity and the application has been reviewed and approved

and a stormwater permit issued by the Department. State agencies may submit a single permit application containing stormwater management standards and specifications for all land disturbing activities conducted under the requirements of this article. State agency stormwater management standards and specifications shall include, but are not limited to:

1. Technical criteria to meet the requirements of this article and regulations developed under this article;
2. Provisions for the long-term responsibility and maintenance of stormwater management control devices and other techniques specified to manage the quantity and quality of runoff;
3. Provisions for erosion and sediment control and stormwater management program administration, plan design, review and approval, and construction inspection and enforcement;
4. Provisions for ensuring that responsible personnel and contractors obtain certifications or qualifications for erosion and sediment control and stormwater management comparable to those required for local government;
5. Implementation of a project tracking and notification system to the Department of all land disturbing activities covered under this article; and
6. Requirements for documenting on-site changes as they occur to ensure compliance with the requirements of the article.

B. All state agencies shall comply with the provisions of this article and the stormwater management provisions of the Erosion and Sediment Control Law (§ [10.1-560](#) et seq.), and related regulations. The state agency responsible for the land-disturbing activity shall ensure compliance with the issued permit, permit conditions, and plan specifications. The Department shall perform random site inspections to assure compliance with this article, the Erosion and Sediment Control Law and regulations adopted thereunder.

C. The Department shall have 30 days in which to review the permit application and to issue its permit decision, which shall be binding on the state agency or the private business hired by the state agency.

As on-site changes occur, the state agency shall submit changes in the permit application to the Department.

D. The Department may assess an administrative charge to cover a portion of the costs of services rendered associated with its responsibilities pursuant to this section.

(1989, cc. 467, 499; 2004, c. 372.)

#### **§ 10.1-603.6. Duties of the Department.**

A. The Department shall provide technical assistance, training, research, and coordination in stormwater management technology to the local governments consistent with the purposes of this article.

B. The Department is authorized to review the permit application for any project with real or potential interjurisdictional impacts upon the request of one of the involved localities to determine that the plan is consistent with the provisions of this article. Any such review shall be

completed and a report submitted to each locality involved within 90 days of such request being accepted.

C. The Department shall be responsible for the implementation of this article.

(1989, cc. 467, 499; 2004, c. 372.)

**§ 10.1-603.7. Authorization for more stringent ordinances.**

A. Localities are authorized to adopt more stringent stormwater management ordinances than those necessary to ensure compliance with the Board's minimum regulations, provided that the more stringent ordinances are based upon factual findings of local or regional comprehensive watershed management studies or findings developed through the implementation of a MS4 permit or a locally adopted watershed management study and are determined by the locality to be necessary to prevent any further degradation to water resources or to address specific existing water pollution including nutrient and sediment loadings, stream channel erosion, depleted groundwater resources, or excessive localized flooding within the watershed and that prior to adopting more stringent ordinances a public hearing is held after giving due notice.

B. Any local stormwater management program in existence before January 1, 2005 that contains more stringent provisions than this article shall be exempt from the requirements of subsection A.

(1989, cc. 467, 499; 1991, c. 84; 2004, c. 372.)

**§ 10.1-603.8. Regulated activities; submission and approval of a permit application; security for performance; exemptions.**

A. A person shall not develop any land for residential, commercial, industrial, or institutional use until he has submitted a permit application to the permit issuing authority and has obtained a permit. The permit issuing authority shall act on any permit application within 60 days after it has been determined by the permit issuing authority to be a complete application. The permit issuing authority may either issue the permit or deny the permit and shall provide written rationale for the denial. The permit issuing authority shall act on any permit application that has been previously disapproved within 45 days after the application has been revised, resubmitted for approval, and deemed complete. Prior to issuance of any permit, the permit issuing authority may also require an applicant, excluding those regulated under § [10.1-603.5](#), to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the permit issuing authority, to ensure that measures could be taken by the permit issuing authority at the applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate actions which may be required of him by the permit conditions as a result of his land disturbing activity. If the permit issuing authority takes such action upon such failure by the applicant, the permit issuing authority may collect from the applicant for the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within 60 days of the completion of the requirements of the permit conditions, such bond, cash escrow, letter of credit or other legal

arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated. These requirements are in addition to all other provisions of law relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits.

B. Notwithstanding any other provisions of this article, the following activities are exempt:

1. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1;

2. Clearing of lands specifically for agricultural purposes and the management, tilling, planting or harvesting of agricultural, horticultural, or forest crops;

3. Single-family residences separately built and disturbing less than one acre and not part of a larger common plan of development or sale, including additions or modifications to existing single-family detached residential structures. However, localities subject to the Chesapeake Bay Preservation Act (§ [10.1-2100](#) et seq.) may regulate these single family residences where land disturbance exceeds 2,500 square feet;

4. Land disturbing activities that disturb less than one acre of land area except for land disturbing activity exceeding an area of 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20 et seq.) adopted pursuant to the Chesapeake Bay Preservation Act (§ [10.1-2100](#) et seq.) or activities that are part of a larger common plan of development or sale that is one acre or greater of disturbance; however, the governing body of a locality which has adopted a stormwater management program may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply;

5. Linear development projects, provided that (i) less than one acre of land will be disturbed per outfall or watershed, (ii) there will be insignificant increases in peak flow rates, and (iii) there are no existing or anticipated flooding or erosion problems downstream of the discharge point;

6. Discharges to a sanitary sewer or a combined sewer system;

7. Activities under a State or federal reclamation program to return an abandoned property to an agricultural or open land use; and

8. Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project and that disturbs less than five acres of land.

C. Electric, natural gas, and communication utility companies, interstate and intrastate natural gas pipeline companies, and railroad companies may not undertake any land clearing, soil movement, or construction activity involving soil movement or land disturbance one acre or greater unless the company has submitted a permit application for the land-disturbing activity and the application has been reviewed and approved and a stormwater permit issued by the Board. Companies may submit a single permit application containing stormwater management standards and specifications for all land disturbing activities conducted under the requirements of this article.

(1989, cc. 467, 499; 1994, cc. 605, 898; 2004, c. 372.)

**§ 10.1-603.9. Permit application required for issuance of grading, building, or other permits.**

Upon the adoption of a local ordinance no grading, building or other permit shall be issued for a property unless a stormwater permit application has been approved that is consistent with the stormwater program and this article and unless the applicant has certified that all land clearing, construction, disturbance, land development and drainage will be done according to the approved permit conditions.

(1989, cc. 467, 499; 2004, c. 372.)

**§ 10.1-603.10. (For contingent repeal, see Editor's note) Recovery of administrative costs.**

Any locality which administers a stormwater management program may charge applicants a reasonable fee to defray the cost of program administration, including costs associated with plan review, issuance of permits, periodic inspection for compliance with approved plans, and necessary enforcement, provided that charges for such costs are not made under any other law, ordinance or program. The fee shall not exceed an amount commensurate with the services rendered and expenses incurred or \$1,000, whichever is less.

(1989, cc. 467, 499.)

**§ 10.1-603.11. Monitoring, reports, investigations, and inspections.**

A. The permit issuing authority (i) shall provide for periodic inspections of the installation of stormwater management measures (ii) may require monitoring and reports from the person responsible for meeting the permit conditions to ensure compliance with the permit and to determine whether the measures required in the permit provide effective stormwater management, and (iii) conduct such investigations and perform such other actions as are necessary to carry out the provisions of this article. If the permit issuing authority determines that there is a failure to comply with the permit conditions, notice shall be served upon the permittee or person responsible for carrying out the permit conditions by registered or certified mail to the address specified in the permit application, or by delivery at the site of the development activities to the agent or employee supervising such activities. The notice shall specify the measures needed to comply with the permit conditions and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, the permit may be revoked by the permit issuing authority or the Board and the permittee or person responsible for carrying out the permit conditions shall be deemed to be in violation of this article and upon conviction shall be subject to the penalties provided by § [10.1-603.14](#).

B. Notwithstanding subsection A of this section, the following may be applied:

1. Where a county, city, or town administers the local control program and the permit issuing authority are not within the same local government department, the locality may designate one department to inspect, monitor, report, and ensure compliance.
2. Where a permit issuing authority has been established, and such authority is not vested

in an employee or officer of local government but in the commissioner of revenue or some other person, the locality shall exercise the responsibilities of the permit issuing authority with respect to monitoring, reports, inspections, and enforcement unless such responsibilities are transferred as provided for in this section.

(1989, cc. 467, 499; 2004, c. 372.)

**§ 10.1-603.12. Department to review local and state agency programs.**

A. The Department shall develop and implement a review and evaluation schedule so that the effectiveness of each local government's and state agency's stormwater management program, Municipal Separate Storm Sewer Management Program, and other MS4 permit requirements is evaluated no less than every five years. The review shall include an assessment of the extent to which the program has reduced nonpoint source pollution and mitigated the detrimental effects of localized flooding.

B. If, after such a review and evaluation, a local government is found to have a program that does not comply with the provisions of this article or regulations adopted thereunder, the Board may issue an order requiring that necessary corrective action be taken within a reasonably prescribed time. If the local government has not implemented the corrective action identified by the Board within 30 days following receipt of the notice, or such additional period as is necessary to complete the implementation of the corrective action, then the Board shall take administrative and legal actions to ensure compliance with the provisions of this article. If the program is delegated to the locality by the Board, the Board may revoke such delegation and have the Department administer the program.

(1989, cc. 467, 499; 2004, c. 372.)

**§ 10.1-603.12:1. Right of entry.**

The Department, the permit issuing authority, or any duly authorized agent of the Department or permit issuing authority may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this article.

(2004, c. 372.)

**§ 10.1-603.12:2. Information to be furnished.**

The Board, the Department, or the permit issuing authority may require every permit applicant or permittee to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this article. Any personal information shall not be disclosed except to an appropriate official of the Board, Department, US EPA, or permit issuing authority or as may be authorized pursuant to the

Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.). However, disclosure of records of the Department, the Board, or the permit issuing authority relating to (i) active federal environmental enforcement actions that are considered confidential under federal law, (ii) enforcement strategies, including proposed sanctions for enforcement actions, and (iii) any secret formulae, secret processes, or secret methods other than effluent data used by any permittee or under that permittee's direction is prohibited. Upon request, such enforcement records shall be disclosed after a proposed sanction resulting from the investigation has been determined by the Department, the Board, or the permit issuing authority. This section shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any land disturbing activity that may have occurred, or similar documents.

(2004, c. 372; 2005, c. 102.)

**§ 10.1-603.12:3. Private rights not affected.**

The fact that any permittee holds or has held a permit issued under this article shall not constitute a defense in any civil action involving private rights.

(2004, c. 372.)

**§ 10.1-603.12:4. Enforcement by injunction, etc.**

It shall be unlawful for any person to fail to comply with any special order or emergency special order that has become final under the provisions of this article. Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, order, or any permit condition issued by the Board, Department, or permit issuing authority as authorized to do such, or any provisions of this article may be compelled in a proceeding instituted in any appropriate court by the Board, Department, or permit issuing authority to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.

(2004, c. 372.)

**§ 10.1-603.12:5. Testing validity of regulations; judicial review.**

A. The validity of any regulation adopted by the Board pursuant to this article may be determined through judicial review in accordance with the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.).

B. An appeal may be taken from the decision of the court to the Court of Appeals as provided by law.

(2004, c. 372.)

#### **§ 10.1-603.12:6. Right to hearing.**

Any permit applicant or permittee under this article aggrieved by any action of the permit issuing authority or Board taken without a formal hearing, or by inaction of the permit issuing authority or Board, may demand in writing a formal hearing by the Board or locality causing such permit applicant's or permittee's grievance, provided a petition requesting such hearing is filed with the Board or the locality within 30 days after notice of such action.

(2004, c. 372.)

#### **§ 10.1-603.12:7. Hearings.**

A. The hearings held under this article pertaining to the responsibilities or actions of the Board may be conducted by the Board itself at a regular or special meeting of the Board, or by at least one member of the Board designated by the chairman to conduct such hearings on behalf of the Board at any other time and place authorized by the Board.

B. A verbatim record of the proceedings of such hearings shall be taken and filed with the Board. Depositions may be taken and read as in actions at law.

C. The Board shall have power to issue subpoenas and subpoenas duces tecum, and at the request of any party shall issue such subpoenas. The failure of a witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the Board in the manner prescribed in § [2.2-4022](#). Witnesses who are subpoenaed shall receive the same fees and reimbursement for mileage as in civil actions.

D. Localities holding hearings under this article shall do so in a manner consistent with this section.

(2004, c. 372.)

#### **§ 10.1-603.13. Appeals.**

Any permittee or party aggrieved by a permit or enforcement decision of the permit issuing authority or Board, or any person who has participated, in person or by submittal of written comments, in the public comment process related to a final decision of the permit issuing authority or Board under this article, whether such decision is affirmative or negative, is entitled to judicial review thereof in accordance with the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.) if such person meets the standard for obtaining judicial review of a case or controversy pursuant to Article III of the United States Constitution. A person shall be deemed to meet such standard if (i) such person has suffered an actual or imminent injury that is an invasion of a legally protected interest and that is concrete and particularized; (ii) such injury is fairly traceable to the decision of the permit issuing authority or the Board and not the result of the independent action of some third party not before the court; and (iii) such injury will likely be redressed by a favorable decision by the court.

The provisions of § [2.2-4030](#) shall not apply to decisions rendered by localities.

(1989, cc. 467, 499; 2004, c. 372.)

**§ 10.1-603.13:1. Appeal to Court of Appeals.**

From the final decision of the circuit court an appeal may be taken to the Court of Appeals as provided in § [17.1-405](#).

(2004, c. 372.)

**§ 10.1-603.14. Penalties, injunctions, and other legal actions.**

A. Any person who violates any provision of this article, or of any regulations or ordinances adopted hereunder, including those adopted pursuant to the conditions of an MS4 permit or who fails, neglects or refuses to comply with any order of the permit issuing authority, the Department, Board, or court, issued as herein provided, shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense. The Board shall adopt a regulation establishing a schedule of civil penalties to be utilized by the permit issuing authority in enforcing the provisions of this article. The Board, Department, or permit issuing authority for the locality wherein the land lies may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate circuit court. Any civil penalties assessed by a court as a result of a summons issued by a locality shall be paid into the treasury of the locality wherein the land lies, except where the violator is the locality itself, or its agent. When the penalties are assessed by the court as a result of a summons issued by the Board or Department, or where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia Stormwater Management Fund established pursuant to § [10.1-603.4:1](#). Such civil penalties paid into the treasury of the locality in which the violation occurred are to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.

B. Any person who willfully or negligently violates any provision of this article, any regulation or order of the Board, order of the permit issuing authority or the Department, ordinance of any locality, any condition of a permit, or any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months and a fine of not less than \$2,500 nor more than \$32,500, either or both. Any person who knowingly violates any provision of this article, any regulation or order of the Board, order of the permit issuing authority or the Department, ordinance of any locality, any condition of a permit or any order of a court issued as herein provided, or who knowingly makes any false statement in any form required to be submitted under this article or knowingly renders inaccurate any monitoring device or method required to be maintained under this article, shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than three years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not less than \$5,000 nor more than \$50,000 for each violation. Any defendant that is not

an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine of not less than \$10,000. Each day of violation of each requirement shall constitute a separate offense.

C. Any person who knowingly violates any provision of this article, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily harm, shall, upon conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor more than 15 years and a fine of not more than \$250,000, either or both. A defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine not exceeding the greater of \$1 million or an amount that is three times the economic benefit realized by the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine and imprisonment for any subsequent conviction of the same person under this subsection.

D. Violation of any provision of this article may also include the following sanctions:

1. The Board, Department, or the permit issuing authority may apply to the circuit court in any jurisdiction wherein the land lies to enjoin a violation or a threatened violation of the provisions of this article or of the local ordinance without the necessity of showing that an adequate remedy at law does not exist.

2. With the consent of any person who has violated or failed, neglected or refused to obey any ordinance, any condition of a permit, any regulation or order of the Board, any order of the permit issuing authority or the Department, or any provision of this article, the Board, Department, or permit issuing authority may provide, in an order issued against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in this section. Such civil charges shall be instead of any appropriate civil penalty that could be imposed under this section. Any civil charges collected shall be paid to the locality or state treasury pursuant to subsection A.

(1989, cc. 467, 499; 2004, c. 372; 2006, c.171)

#### **§ 10.1-603.15. Cooperation with federal and state agencies.**

Localities operating their own programs and the Department are authorized to cooperate and enter into agreements with any federal or state agency in connection with permits for land disturbing activities for stormwater management.

(1989, cc. 467, 499; 2004, c. 372.)